

Honolulu, Hawaii

FEB 20 2015

RE: S.B. No. 40
S.D. 2

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which
was referred S.B. No. 40, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO LICENSING,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish the behavior analyst program within the
Department of Commerce and Consumer Affairs; and
- (2) Establish licensing requirements for behavior analysts
and assistant behavior analysts.

Your Committee received testimony in support of this measure from the Department of Human Services; State Council on Developmental Disabilities; Community Children's Councils of Hawaii; Hawai'i Association for Behavior Analysis; Autism Speaks; Easter Seals Hawaii; Horizons Academy of Maui, Inc.; Family Voices Hawaii; and seven individuals. Your Committee received comments on this measure from the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs; Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs; Hawaii Disability Rights Center; and Hawaii Medical Service Association.

Your Committee finds that behavior analysts engaged in the practice of behavior analysis typically treat individuals with autism spectrum disorders. Many consumers of applied behavior



analysis are children, and some consumers of applied behavior analysis may be nonverbal. It is therefore appropriate for the practice of behavior analysis to be subject to regulation and control by the State.

Your Committee further finds that there are certain measures currently moving through the legislative process, including Senate Bill No. 791, that provide mandated insurance coverage for the diagnosis and treatment of autism. Should such legislation ultimately be enacted, it is critical that behavior analysts, who engage in the practice of behavior analysis with individuals with autism, be fully licensed. Your Committee notes that the licensure requirements proposed by this measure are needed because federal requirements specify providers of services must be licensed in their profession in order to participate in Medicaid. Furthermore, health insurance plans in Hawaii will not provide reimbursement for services provided by behavior analysts unless those individuals are licensed in the State.

Accordingly, this measure addresses the urgent need for a licensing process for behavior analysts. Your Committee notes that it is imperative that the licensing of behavior analysts begin concurrently with any mandated insurance coverage for the diagnosis and treatment of autism.

Your Committee has amended this measure by:

- (1) Deleting language that would have established licensing requirements for assistant behavior analysts and deleting other language referring to assistant behavior analysts;
- (2) Specifying that notwithstanding any other law, the behavior analyst program is established within the Department of Commerce and Consumer Affairs;
- (3) Enabling the Department of Commerce and Consumer Affairs to employ necessary personnel without regard to chapter 76, Hawaii Revised Statutes, to assist with the implementation and functions of the behavior analyst program;
- (4) Specifying that beginning on January 1, 2016, persons must have a license to practice behavior analysis in Hawaii;



- (5) Clarifying that the fine for violating the licensure requirements for behavior analysts and the practice of behavior analysis shall be \$1,000 for each separate offense;
- (6) Clarifying that the Director of Commerce and Consumer Affairs has the power to discipline a behavior analyst, including for violations of the Behavior Analyst Certification Board's ethical guidelines for responsible conduct;
- (7) Requiring each behavior analyst to pay a surcharge in addition to license or renewal fees, to be maintained in a separate account within the compliance resolution fund and noting that the surcharges shall be transferred to the compliance resolution fund until sums transferred equal the sums appropriated by this measure;
- (8) Clarifying the persons exempted from the behavior analyst licensure requirements established by this measure;
- (9) Specifying that behavior analyst licenses shall be valid for two years;
- (10) Clarifying the grounds for refusal to renew, reinstate, or restore a license and for denial, revocation, suspension, or condition of a license;
- (11) Specifying that the fine for violating certain acts or conditions on the part of a licensee or licensee applicant shall be not more than \$1,000 per violation;
- (12) Inserting an unspecified repeal date for the behavior analyst program under section 26H-4, Hawaii Revised Statutes;
- (13) Appropriating an unspecified sum out of the compliance resolution fund to implement the behavior analyst program;
- (14) Updating the purpose section accordingly;
- (15) Inserting an effective date of July 1, 2015; and



- (16) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 40, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 40, S.D. 2, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



The Senate
Twenty-Eighth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* <div style="font-size: 1.2em; font-family: cursive;">SB40 SD1</div>	Committee Referral: <div style="font-size: 1.2em; font-family: cursive;">CPN</div>	Date: <div style="font-size: 1.2em; font-family: cursive;">2/18/2015</div>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended 2312 </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div style="text-align: center;"> <input type="checkbox"/> Hold 2310 </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
KAHELE, Gilbert	✓			✓
KIDANI, Michelle N.	✓			
NISHIHARA, Clarence K.				✓
WAKAI, Glenn	✓			
SLOM, Sam				✓
TOTAL	5	0	0	2
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature: <div style="font-size: 1.5em; font-family: cursive; margin-left: 20px;">V. S. O. J. L.</div>				
<div style="display: flex; justify-content: space-between; font-size: 0.8em;"> <div>Distribution:</div> <div>Original</div> <div>Yellow</div> <div>Pink</div> <div>Goldenrod</div> </div> <div style="display: flex; justify-content: space-between; font-size: 0.8em; margin-top: 2px;"> <div>File with Committee Report</div> <div>Clerk's Office</div> <div>Drafting Agency</div> <div>Committee File Copy</div> </div>				

*Only one measure per Record of Votes